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In The

Supreme Court of the United States

October Term, 1997

WILLIAM J. CLINTON, *et al.*,

Appellants,

v.

CITY OF NEW YORK, *et al.*,

Appellees.

ROBERT E. RUBIN,

Appellant,

v.

SNAKE RIVER POTATO GROWERS, INC., *et al.*,

Appellees.

On Appeal From The United States District Court For The District Of Columbia

BRIEF FOR CONGRESSMEN DAN BURTON, GERALD SOLOMON, AND PORTER GOSS AS AMICUS CURIAE IN SUPPORT OF APPELLANTS

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QUESTION PRESENTED

Whether the Line Item Veto Act, Pub. L. No. 104-130, 110 Stat. 1200 (1996), violates the United States Constitution.

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INTEREST OF HOUSE AMICI

Congressman Dan Burton represents the Sixth Congressional District of Indiana, Congressman Gerald Solomon represents the Twenty-Second Congressional District of New York, and Congressman Porter J. Goss represents the Fourteenth Congressional District of Florida (collectively the "House Amici"), in the United States House of Representatives. The House Amici voted on the Line Item Veto Act, Pub. L. No. 104-130, 110 Stat. 1200, codified at 2 U.S.C. §§ 691 *et seq.* ("the Act"), the Balanced Budget Act of 1997, and the Taxpayer Relief Act of 1997. The House Amici believe that the Line Item Veto Act is both constitutional and an innovative budgetary mechanism for eliminating unnecessary federal spending. The House Amici have an interest in having this Court declare that this budgetary mechanism is constitutional so that it can be used to combat unnecessary federal spending.[1]

STATEMENT

Appellees in this action have challenged the constitutionality of the Line Item Veto Act, Pub. L. No. 104-130, 110 Stat. 1200, codified at 2 U.S.C. §§ 691 *et seq.* ("the Act"). In *City of New York, et al. v. William J. Clinton, et al.*, Civ. No. 97-2393 (TFH), appellees attacked the President's

[1] No part of this brief was drafted by any of the parties to this action, and no one other than the amici or their counsel have made a monetary contribution to the preparation or submission of this brief.

use of his authority under the Line Item Veto Act to cancel Section 4722(c) of the Balanced Budget Act of 1997, Pub. L. 105-33, which qualified certain state expenditures for federal financial participation under the Medicaid program. In *Snake River Potato Growers, Inc. et al. v. Rubin*, Civ. No. 97-2463 (TFH), appellees challenged the President's use of his Line Item Veto Act authority to cancel Section 968 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, which would have permitted the owners of certain agricultural refining and processing companies to defer the recognition of capital gains on the sale of their facilities to eligible farm cooperatives. The federal district court granted appellees' motion for summary judgment, declaring that the Line Item Veto Act is unconstitutional on the grounds that it violated the Bicameralism and Presentment Clauses of the United States Constitution and that it "impermissibly disrupts the balance of powers among the three branches of government." *City of New York v. Clinton*, 1998 WL 63070, at 13 (D.D.C. Feb. 12, 1998). Appeal was taken directly from the federal district court to this Court.

1. As part of its comprehensive effort to reduce the federal deficit and control runaway federal spending, the 104th Congress sought to strengthen the ability of the President to control the expenditure of appropriated funds. Under the Impoundment Control Act of 1974 ("ICA"), 2 U.S.C. § 681 *et seq.*, the President could only propose rescissions to Congress under a mechanism which anticipated that Congress would expeditiously consider the proposed rescissions. 2 U.S.C. § 683. The ICA proved to be ineffective, as best reflected in that the

President had proposed and Congress had failed to seriously consider $70 billion in proposed rescissions during one five year period in the 1980's.[2] House and Senate leaders, therefore, discussed substantial revisions to the ICA in an effort to make it more effective in restraining spending. Specifically, Congress concluded that legislation to make the ICA effective would have to provide the President with the ability to defer or avoid spending. The Line Item Veto Act is the product of these efforts to respond to the ineffectiveness of the ICA.

In its simplest terms, the Line Item Veto Act authorizes the President to "cancel" specific spending and revenue items contained in any bill or joint resolution signed into law. 2 U.S.C. § 691(a). Under the Act, the President's authority to cancel extends to: (1) "dollar amounts of discretionary budget authority;" (2) "items of new direct spending;" and (3) "limited tax benefits." 2 U.S.C. § 691c. If the President acts to cancel a dollar amount of discretionary budget authority, the cancellation is deemed "to rescind" that authority. 2 U.S.C. § 691e(4)(A). If the cancellation is directed either at an item of new direct spending or a limited tax benefit, it renders the canceled spending or revenue provision "without legal force or effect." 2 U.S.C. § 691e(4)(B) and (C). The Act's "lockbox" provisions prohibit savings resulting from cancellations

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[2] Line Item Veto: Joint Hearing Before the Comm. on Government Reform and Oversight House of Representatives and the Comm. On Governmental Affairs United States Senate, 104th Cong. 12 (1995) (statement of Hon. John McCain, United States Senator from the State of Arizona); *Id.* at 14 (statement of Hon. Dan Coats, United States Senator from the State of Indiana).

being used for any purpose other than deficit reduction, thereby preventing the President from spending or Congress from reappropriating canceled funds. 2 U.S.C. § 691b(b).

To cancel an item of spending, the President must submit a special message to Congress within five calendar days following the enactment of the law containing the provision to be canceled. 2 U.S.C. §§ 691(a)(B), 691a(c)(1). In making such cancellations, the President must affirmatively find that the cancellation will reduce the Federal budget deficit and will not impair any essential government function or harm any national interest. 2 U.S.C. § 691(a)(A). In his special message to Congress, the President must also set forth his reasons for canceling the item, the estimated fiscal and budgetary impact of the cancellation, as well as the cancellation's likely geographic impact. 2 U.S.C. § 691a(b).

Cancellation occurs when Congress receives the President's special message. 2 U.S.C. § 691b(a). Canceled provisions become the subject of highly expedited disapproval bills. 2 U.S.C. §§ 691d, 691e(6). If a disapproval bill is then enacted into law, it nullifies the cancellations contained in the bill and the canceled spending or revenue provisions become effective again. 2 U.S.C. § 691b(a). The President may not use his cancellation authority under the Line Item Veto Act with respect to disapproval bills. 2 U.S.C. § 691(c).

2. In the decision below, the court held that the Line Item Veto Act is unconstitutional under the presentment and bicameralism requirements of Article I and that it also "impermissibly disrupts the balance of powers

among the three branches of government." *City of New York*, 1998 WL 63070 at 13. As to the presentment and bicameralism requirements of Article I, the court concluded that the Line Item Veto Act allows the President to "produc[e] laws that had not adhered to those requirements." *Id.* at 11. According to the court below, "[t]here is no way of knowing whether these laws, in their truncated form, would have received the requisite support from both the House and Senate," *id.*, and, "because the laws that emerged after the Line Item Veto are not the same laws that proceeded through the legislative process, [they] are not valid." *Id.*

Central to the court's analysis is its view that the President's power to "cancel" an appropriation under the Act can constitute nothing short of a veto. *Id.* at 12. In reaching this conclusion, the court relied heavily upon the Act's definition of "cancel," which either "rescinds" discretionary budget authority or deprives other appropriations of "legal force and effect." *Id.* The court also deemed significant the fact that a Presidential cancellation under the Act can only be overcome with the passage of new legislation. *Id.* In the court's view, the President's authority to cancel "has every mark of a veto" and refused to entertain any alternative characterizations. *Id.*

Beyond the technical requirements of bicameralism and presentment, the court went on to condemn the Act on general separation of powers principles. According to the court,

> [t]he Line Item Veto Act impermissibly crosses the line between acceptable delegations of rulemaking authority and unauthorized surrender to the President of an inherently legislative function, namely, the authority to permanently shape laws and package legislation.

Id. at 14. The court below distinguished the power conferred on the President under the Line Item Veto Act from powers normally deemed acceptable delegations of rulemaking authority. The court noted that the Line Item Veto Act is distinguishable because cancellation is permanent, and, therefore, canceled provisions cannot be revived by either the President or his successors. *Id.* Thus, from the court's perspective below, the Line Item Veto Act "enables the President, in his discretion, to pick and choose among portions of an enacted law to determine which ones will remain valid." *Id.* In the court's view, such authority cannot be reconciled with "the central tenets of our system of government. . . . " *Id.* at 15.[3]

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[3] The district court suggested, without further analysis, that the provisions of the Act relating to limited tax benefits confers upon the President an "unprecedented" power to "make permanent changes" to the Internal Revenue Code. *Id.* While nothing in the district court's decision warrants treating the limited tax benefit provision differently from the other provisions of the Act, the House Amici would respectfully submit that in the event this Court determines that the limited tax benefit provision of the Act stands on different constitutional grounds, that this part of the Act is severable and should be severed. Under well-established precedent, unless Congress would not have enacted the remainder of the Line Item Veto Act independent of the tax expenditure provision, the tax expenditure provision is to be severed if the remainder of the Act is fully operative as a law. *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 685 (1987). House Amici believe that the tax expenditure provision is severable because the Line Item Veto Act would have been enacted even without that provision and because the Act's operation without that provision will nevertheless accomplish Congress's intent of controlling excessive federal spending.

SUMMARY OF ARGUMENT

The House Amici respectfully submit that the decision below declaring the Line Item Veto Act unconstitutional is incorrect. In concluding that the President's cancellation authority under the Act is unconstitutional, the court below engaged in an impermissibly simplistic construction of the Act, drawing its interpretation exclusively from isolated clauses and definitions in the Act while ignoring the substance and purpose of the Act as well the substantial history of Presidents exercising similar authority in the past. The decision below has the effect of constitutionalizing an area of federal authority in which the legislative and executive branches have previously exercised concurrent powers and where the scope of executive authority has historically fluctuated in response to internal political considerations and external forces. In this manner, the decision below freezes into the constitutional firmament the allocation of these concurrent powers found in the Impoundment Control Act of 1974, which was enacted at a time when the relations between the executive and legislative branches were particularly strained. For these reasons and for the reasons expressed in the Solicitor General's brief of March 13, 1998, the House Amici respectfully submit that the decision below should be reversed and the Line Item Veto Act declared constitutional.

ARGUMENT

1. In reaching the conclusion that cancellation under the Act is tantamount to a Presidential veto, the

court below overlooks the obvious and more contextually defensible alternative that a cancellation under the Act is, in fact, what Congress intended it to be – a limited and carefully defined power of rescission. In substantial part, in passing the Line Item Veto Act, Congress sought to loosen the very tight restrictions that the Impoundment Control Act of 1974 had placed upon the President's powers of recission and reserve. Indeed, the stated purpose of the Act was to expand the President's "rescission authority to include both new direct spending and limited tax benefits." H.R. Conf. Rep. No. 104-491, at 16 (1996). Because the Line Item Veto Act represented an effort on the part of Congress to readjust the standards governing the rescission and reserve authority that it conferred upon the President, the constitutionality of the Act should be adjudged against other forms of rescission and reserve that historically have been employed by the legislative and executive branches to integrate their powers into a workable government.

History provides numerous and various examples of rescission and reserve. For example, in responding to the extraordinary budgetary and financial pressures created by the Great Depression in 1933, Congress granted President Roosevelt broad powers to reorganize the executive branch and provided that all appropriations "unexpended by reason of" such reorganization be "impounded and returned to the Treasury." Act of March 3, 1933, ch. 212, § 16, 47 Stat. 1517-1519. In more recent times, facing the sharply escalating costs of the Vietnam War, Congress passed the Revenue Expenditure Control Act of 1968 (Pub. L. No. 90-364, §§ 202(a), 202(b)) which sharply curtailed budget outlays for 1969 and gave the

President unrestricted discretion to reserve as much as $6 billion in outlays and $10 billion in new spending to achieve budgetary objectives.[4]

Neither of these Acts involved the unconstitutional delegation of legislative authority. Instead, each represented the creation of executive power. When President Roosevelt reorganized his executive branch agencies and returned the savings to the Treasury, he was neither "producing new law" nor ignoring the bicameral passage and presentment requirements of Article I. Instead, he was "faithfully executing" the power that Congress had conferred upon him by duly enacted legislation. When President Johnson reserved the many billions in outlays and new appropriations for 1969, he was not "single-handedly revising the work" of the legislative branch. He, too, was faithfully executing the law that Congress had duly enacted.

These examples reflect the obvious proposition that while Article I confers upon Congress the ultimate responsibility to appropriate funds and control expenditures through its lawmaking powers, it also affords Congress the ability to create and confer upon the executive subordinate authority to aid in the accomplishment of legislative objectives. The scope and extent of such executive authority fluctuates over time in response to changed circumstances, such as war and economic depression, and reflects the extent to which the legislative branch has

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[4] The Amicus Brief submitted by the United States Senate in the proceeding below contains an excellent description of the many forms of rescission and reserve that have been used throughout American history.

confidence that the executive shares its goals and will aid in the accomplishment of its objectives. So long as Congress has not divested itself of the ultimate power, through legislation, to either override particular executive determinations or to rescind the executive authority *in toto*, it has fully retained its exclusive lawmaking authority under the Constitution. In this respect, the President's rescission and reserve authority operates in a manner indistinguishable from the rulemaking authority that Congress routinely assigns the executive in regulatory legislation.

2. Compared to these historical examples of rescission and reserve, the authority accorded the President under the Line Item Veto Act is unexceptional. While the court below concluded that the President's cancellation authority under the Act is a veto because a canceled item cannot be restored short of the enactment of new law, it is obvious that the same fate awaited any executive branch office or function that was "reorganized" by President Roosevelt and whose funding was "impounded and returned to the Treasury." Once funds are "impounded and returned to the Treasury," the President presumably does not possess the unilateral authority to recreate the preexisting agency and restore its funding, and new legislation would be required to recreate the office or function in question and appropriate funds for its operation.

Indeed, in many significant respects, the Line Item Veto Act more closely circumscribes the rescission and reserve authority accorded the President than did these earlier examples. Unlike the Act of March 3, 1933, the Line Item Veto Act does not grant the President the broad authority to reorganize executive agencies, bureaus and

offices. Nor does it give the President the broad authority to consolidate budgets or adjust funding levels. Instead, the Line Item Veto Act forces the President to either accept or reject, without adjustment or revision, the funding and appropriation levels set by the Congress. Unlike the Revenue Expenditure Control Act of 1968, which gave the President broad authority over the course of a funding cycle to reserve funds, the Line Item Veto Act requires the President to make and notify Congress of any rescission he wishes to make within five days of his signing of the appropriating or authorizing legislation. 2 U.S.C. §§ 691(a)(B), 691a(c)(1). Finally, unlike either example discussed above, the Line Item Veto Act highlights the subordinate and derivative nature of the President's rescission authority by requiring that the President explain the reasons for his rescission and by making explicit provision for Congress's expeditious consideration of disapproval legislation. 2 U.S.C. §§ 691a(b), 691d, 691e(6).

The derivative and subordinate nature of the President's cancellation authority power under the Line Item Veto Act further ensures that it is not the unconstitutional delegation of legislative authority that the court below found. Conspicuously absent from the decision below is any discussion or recognition of the fact that Congress retains the full and complete authority to exempt any specific piece of legislation from the application of the Line Item Veto Act. Because Congress retains this power, it has effectively made a conscious determination that each piece of legislation subject to the Line Item Veto Act will be subject to the President's rescission authority.

Similarly, the decision below fails to acknowledge or consider that the Line Item Veto Act imposes no limitation on Congress's authority or ability to limit, modify or expand the President's rescission authority in subsequent legislation. Just as the Impoundment Control Act of 1974 and the Line Item Veto Act itself have reflected the changing views of Congress regarding the utility and advisability of granting rescission authority to the President, Congress retains the full and complete authority to revisit its current formulation of the President's rescission authority in the future.[5]

3. The fundamental error committed by the court below is that none of this rich reservoir of historical or contextual evidence appears in the decision below. Instead, the court simply concludes that because the term "cancel" in the Act is defined as meaning "to rescind" or to deprive the affected provision of "legal force and effect," the President's authority to cancel can *only* be accurately characterized as a "veto." *City of New York*, 1998 WL 63070 at 12.[6] The balance of the court's holding –

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[5] Indeed, the fact that the Act expires under its own terms in 2005 means that the Congress will have to affirmatively reconsider and re-adopt the President's cancellation authority within the next seven years. Congress, thus, jealously guarded its legislative prerogatives through the inclusion of this sunset provision in the Act.

[6] The court below apparently deems significant the fact that when the President invokes his cancellation authority, the subject provision is deprived of "legal force and effect." *City of New York*, 1998 WL 63070 at 12. However, it would seem obvious that once the President elects to utilize his cancellation authority with respect to a given provision, Congress would want to make sure that such provision had no lingering

that the President's cancellation authority confers the power to "produc[e] law" or that the Act "surrender[s] to the President an inherently legislative function," *id.* at 11 and 14 – flows from this simplistic and abstract linguistic analysis.

As this Court has repeatedly observed, however, the meaning of the Constitution and the constitutionality of laws cannot be divined by simply parsing words and phrases. As Justice Frankfurter noted nearly fifty years ago, "[d]eeply embedded traditional ways of conducting government cannot supplant the Constitution or legislation, . . . they give meaning to the words of a text or supply them." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 610 (1952). Here, Congress employed this language in the Line Item Veto Act to achieve a specific objective: to confer again on the President an authority that had lain dormant for nearly a quarter of a century. It is against this backdrop that the constitutionality of the Line Item Veto Act must be assessed. Considered together, the historical record, the expressed purpose and objective of Congress as well as the contextual evidence demonstrate that the Line Item Veto Act creates neither an impermissible veto nor an unconstitutional delegation of legislative powers. Instead, the Act simply creates a form of executive authority, not unlike the authority routinely created by regulatory legislation, which, because it remains subject to Congress's plenary supervision and control, is constitutionally unobjectionable.

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collateral effects as a matter of law. Hence, the need to be clear as to the legal effect of a Presidential cancellation.

Indeed, much of what the court below deems constitutionally objectionable are factors which are routinely accepted as constitutional in the context of regulatory legislation. For example, the court deems constitutionally significant the fact that by virtue of the President's exercising his cancellation authority under the Line Item Veto Act, the law which is ultimately implemented may vary from the precise terms which were adopted by Congress. The court expressed its concern by observing that:

> Both Houses of Congress, through a process of discussion and compromise, had agreed upon the exact content of the Balanced Budget Act and the Taxpayer Relief Act. These laws reflected the best judgment of both Houses. The laws that resulted after the President's line item veto were different from those consented to by both Houses of Congress. There is no way of knowing whether these laws, in their truncated form, would have received the requisite support from both the House and Senate.

City of New York, 1998 WL 63070 at 11.

The court's logic here is flawed in that it fails to recognize that in "agree[ing] upon the exact content of the Balanced Budget Act and the Taxpayer Relief Act," Congress was fully aware of and knowingly accepted the possibility that the cancellation authority that it so recently had conferred on the President might ultimately affect the appropriation and spending decisions that it had made in the legislation.

Congress legislates against a complex regulatory and legal backdrop and routinely recognizes that particular projects or programs it favors may be frustrated by the

executive branch exercising its duly constituted authority under other legal regimes. For example, virtually every public works project approved and authorized by Congress is subject to review under National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4331 *et seq.*, which confers broad responsibility and authority on executive branch officials to assess and consider the likely environmental impacts of such projects and to take such impacts into consideration in determining whether to go forward with any particular project. In authorizing or funding a particular public works project, Congress fully understands and appreciates the fact that executive review may significantly affect or ultimately frustrate its legislative objective. As is true with the Line Item Veto Act, where Congress decides that it does not wish to have its decisions reconsidered or reevaluated by the executive branch, it need only exempt the legislation in question from NEPA's review requirements to accomplish that objective.

Thus, it begs the question to ask whether the Balanced Budget Act and the Taxpayer Relief Act appropriation bills, as ultimately affected by the President's cancellations under the Line Item Veto Act, would have "received the requisite support from both the House and Senate." *City of New York*, 1998 WL 63070 at 11. It is respectfully submitted that the more appropriate question to ask is whether these laws would have been approved in the form in which they were adopted had the Line Item Veto Act not been in place. Contrary to assumption implicit in the district court's analysis, there is no evidence that either of the provisions at issue in this case would have been approved by Congress in the

absence of the Line Item Veto Act. Indeed, the fact that Congress anticipated that the President would exercise his authority under the Line Item Veto Act is reflected in the fact that Congress expressly identified the provision at issue in the Snake River Potato Growers case as a "limited tax benefit." Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (1997). Given that the term "limited tax benefit" has no discernable meaning apart from the Line Item Veto Act, it is not unreasonable to assume that by using this language, Congress was, in fact, inviting the President's review under the Line Item Veto Act. Accordingly, the central question that the court below ignored was whether the benefit to the Snake River Potato Growers would have been adopted at all in the absence of the Line Item Veto Act.

The courts must assume that Congress understood and anticipated the likely impact of the Line Item Veto Act and the exercise of the Presidential authority contained therein when it passed the Balanced Budget Act and the Taxpayer Relief Act. Congress does not legislate in a legal vacuum and thus its intent and purpose cannot be accurately assessed or understood in some abstract sense. Instead of wondering whether the Congress would have passed the legislation in question in light of how the President ultimately exercised his cancellation authority, the courts should assume that neither the Balanced Budget Act nor the Taxpayer Relief Act would have been passed in the form in which it was adopted had that authority not existed.

Thus, to the extent that the President's cancellation authority under the Line Item Veto Act otherwise constitutes a permissible form of legislatively created executive

authority, the lower court's concerns regarding the ability of Congress to control and direct legislation are misplaced. Congress understands that it legislates against a complex legal and regulatory backdrop. Where necessary, Congress is fully and completely able to protect its legislative prerogatives, without the district court's assistance, by simply exempting legislation from the reach of the Line Item Veto Act.

4. Fundamentally, the decision below fails to recognize that while Congress retains the ultimate lawmaking power under the Constitution, it also has broad power to create executive authority to assist it in that process. The process by which federal funds are appropriated and spent necessarily involves the exercise of the legislative power to appropriate and the executive power to spend. While the Constitution's exclusive grant of lawmaking power to the legislative branch vests final and ultimate authority with the legislature, it does not prevent the legislature from working with the executive to develop mechanisms, like rescission and reserve, in order to integrate and complement the powers vested in the two branches of government in an area in which both exercise some level of authority. So long as the Congress retains its inherent legislative power by reserving unto itself the ability to revisit and, if necessary, revise the President's cancellation authority under the Act, the integration of legislative and executive powers contemplated by the Line Item Veto Act is precisely the sort of cooperative approach to governance that the Constitution anticipates.

These constitutional truths were perhaps best expressed by Justice Jackson nearly fifty years ago when he wrote in *Youngstown Sheet & Tube, Co.*:

> The actual art of governing under our Constitution does not and cannot conform to judicial definitions of the power of any of its branches based on isolated clauses or even single Articles torn from context. While the constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity. Presidential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress.

343 U.S. at 870. The Line Item Veto Act represents the efforts of the legislative and executive branches to "integrate" their dispersed powers into a more effective and responsible approach to the process by which federal funds are appropriated and spent.

The approach to rescission and reserve contained in the Line Item Veto Act reflects a view, shared by both the executive and legislative branches, that the sharply circumscribed formulation of rescission authority contained in the Impoundment Control Act of 1974 was not adequate to address the problem of excessive federal spending. The decision below, however, has the effect of constitutionalizing the very narrow view of permissible rescission authority which is found in the Impoundment Control Act by assuming that any act by the executive which has the effect of reducing spending below that level anticipated in an appropriations bill constitutes an

unconstitutional usurpation of the legislative function. Not only would this remove from the executive and legislative branches the ability to experiment with alternative approaches to rescission and reserve, it also fixes into the constitutional firmament a formulation which was adopted at a time when relations between the executive and legislative branches were strained and antagonistic. The decision below casts a long constitutional shadow across a form of legislatively-created executive authority which has served this country well in times of war and severe economic disruption and leaves both the legislative and executive with little guidance as to how such authority might be constitutionally crafted in the future.

Future Congresses and Presidents will doubtlessly face new and different challenges which will render the rescission formulation contained in this Act as outdated and inoperable as provisions of the Impoundment Control Act of 1974 appear today. As much as this case is about the constitutionality of the specific formulation contained in this Act, it is also about whether the Court will permit the legislative and executive branches to make these choices in the future. It is respectfully submitted that the Line Item Veto Act represents the sort of cooperative integration of legislative and executive authority that the Constitution anticipates and that responsible government demands.

CONCLUSION

For the reasons set forth herein, House Amici respectfully request that this Court reverse the lower court's grant of summary judgment and declare that the Line Item Veto Act is constitutional.

Respectfully submitted,

March 13, 1998

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